Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013	)	MD Docket No. 13-140
	)	
Procedures for Assessment and Collection of Regulatory Fees	)	MD Docket No. 12-201
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008	)	MD Docket No. 08-65

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association ("CCA") submits these comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released by the Commission on May 23, 2013 in the above-captioned dockets.[1]

I. INTRODUCTION AND SUMMARY

CCA is the principal association representing more than 100 competitive wireless providers across the United States, including rural, regional and smaller nationwide carriers. CCA also represents almost 200 Associate Members who provide components and infrastructure vital to the development of the wireless ecosystem.

CCA recognizes the value in reviewing regulatory fees, and is supportive of the Commission's efforts to modernize assessment and collection of regulatory fees and pragmatic use of updated FTE data. The NPRM and FNPRM, however, make proposals that CCA finds

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[1] *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, MD Docket No. 13-140, et al., FCC 13-74 (rel. May 23, 2013) ("NPRM" or "FNPRM").

troubling. In particular, CCA disagrees with proposals to combine wireless and wireline services into a single category, and to assess fees based on broadband services.

In the NPRM, the Commission suggests "including all wireless and wireline FTEs [Full Time Equivalents] in the same allocation to arrive at one uniform regulatory fee rate for ITSP [Interstate Telecommunications Service Providers] and wireless providers, assessed based on revenues."[2] It's unclear whether the Commission contemplates requiring payors of CMRS and BRS fees to continue paying those fees and *also* pay into a new ITSP category, or if the FCC is considering combining all wireline and wireless service assessments into one fee category. But what is clear is that neither proposal has a sound basis in the record; rather, the Commission should continue to calculate wireless carriers' regulatory fees separately, and continue to base this calculation on a carrier's number of subscribers or licenses (as may be the case), instead of revenues.

The Commission also asks (for a second time) whether the Commission has authority under Section 9 of the Communications Act (as amended) to include broadband as a fee category, and how the costs of any such category should be assessed.[3] The prudence (and legality) of this proposal was rejected in comments filed in response to the Commission's last NPRM, and CCA urges the Commission to refrain from creating a fee category based on broadband services at this time.

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2 NPRM ¶ 12.

3 FNPRM ¶ 53, n.106.

II. DISCUSSION

A. CCA Applauds the Commission's Efforts to Modernize the Administration of its Assessment and Collection of Regulatory Fees

While CCA is concerned with some of the proposals contained in the NPRM and FNPRM, it supports the Commission's efforts to promote greater use of technology in improving its regulatory fee notification and collection process.[4] In particular, CCA supports each of the proposals set forth in Section III.D of the NPRM to transition towards "paperless" assessments and collections of regulatory fees, including discontinuation of mail-outs of initial CMRS assessments, and discontinuation of paper and check transactions.[5] As a regulator of communications entities, the Commission should pioneer the government's efforts to take advantage of technological advancements it has helped to provide in the new digital age.

B. The Commission Should not Combine Wireless and Wireline Services to Create a New Fee Category

The Commission should not, however, combine wireless and wireline services into a single fee category (nor should it require that wireless carriers pay CMRS regulatory fees *and* ITSP fees, if that is what it is contemplating). The Commission's stated reasons for doing so are that, while the wireline industry generally has experienced declining revenues—though not all wireline carriers, such as Verizon—wireless revenues have increased over the same time, and wireless services are therefore "increasingly displacing" wireline services.[6] The Commission also claims that "wireless services are comparable to wireline services in many ways and therefore both encompass similar regulatory policies and programs."[7] Yet, contrary to these

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4 NPRM ¶ 42.

5 *Id*. at ¶¶ 43-45.

6 *Id*. at ¶¶ 11, 12.

7 *Id*. at ¶ 12.

assertions, the Commission treats these two services very differently in several important respects. In addition, these assumptions are inappropriate considerations for determining regulatory fee allocations.

As the GAO Report leading to the Commission's issuance of the current NPRM and FNPRM correctly notes, regulatory fees do not include application fees or revenue from spectrum auctions.[8] Wireless carriers are unique among fee payors in that they are the only entities required to purchase space from the federal government on which to deploy the infrastructure necessary to provide service to their customers. Wireline carriers aren't required to purchase licenses from the federal government to erect utility poles or lay conduit. And wireless carriers pay handsomely for the ability to do business: auction revenues not only fund FTEs attributable to auction activities, but also cover roughly 20 percent of the Commission's budget.[9]

The Commission also treats wireless and wireline carriers differently when awarding universal service support. Recently, the Commission refused to extend $185 million in foregone Connect America Fund (CAF) Phase I funding beyond price-cap carriers, despite proposals to open up those funds to others, such as mobile wireless service providers.[10] Rather than finding that the two are "comparable . . . in many ways,"[11] the Commission determined that price-cap carriers were unique in their ability to "leverage their private capital" to quickly deploy services

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8 U.S. Gov't Accountability Office, GAO-12-686, *Federal Communications Commission Regulatory Fee Process Needs to be Updated* at 4 (Aug. 2012) ("GAO Study").

9 *See* NPRM ¶ 7, n.12; Reply Comments of CTIA – The Wireless Association, MD Docket No. 12-201, et al. at 5 (filed Oct. 23, 2012).

10 *Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 13-73 at ¶ 38 (rel. May 22, 2013) ("CAF Phase I R&O").

11 NPRM ¶ 12.

in unserved locations.[12] If the Commission treats wireless and wireline carriers similarly for purposes of assessing regulatory fees, it cannot in good conscience continue its disparate treatment of the two when allocating universal service support.

But more fundamentally, the growth of the wireless industry is an inappropriate factor for the Commission to consider in setting regulatory fees. The GAO Study cited the increase in wireless subscribers compared to the consistent percentage of regulatory fees paid by the cell phone industry as the primary reason why the Commission should review its division of fees—in particular the percentage of fees paid by wireless carriers.[13] In the first instance, and as CCA has previously noted, while the wireless industry *overall* has witnessed growth, a more granular analysis reveals that the two dominant carriers, AT&T and Verizon, have reaped the benefits of this growth (including subscriber additions) at the expense of other carriers.[14] But apart from this, the Commission's authority to set regulatory fees—and what it can consider in setting those fees—is limited by statute. Section 159 only permits the Commission to assess fees "derived by determining the full-time equivalent number of employees performing [relevant] activities . . . within the [assessable Bureaus] and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities . . . ."[15] And as the GAO Report acknowledges:

> According to FCC officials, there is not always a straightforward relationship between growth in the number of subscribers, revenues, or other basis used to determine the fee rate of a fee category and the amount of work FCC performs related to that fee category, and thus these fee shifting numbers do not offer a

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12 CAF Phase I R&O at ¶ 38.

13 GAO Study at 12-13.

14 *See* Comments of Competitive Carriers Association, WT Docket No. 13-135 at 8 (filed June 17, 2013).

15 47 U.S.C. § 159(b)(1)(A).

> clear guide as to how or even the extent to which the division of FCC's regulatory fees among industry sectors should be realigned.[16]

Finally, as a policy matter the Commission should not punish success by using consumer choice as a justification for shifting regulatory fee allocations from one industry group to another. Doing so will likely slow growth in the mobile space, to the detriment of consumers—who are increasingly adopting mobile wireless technology and who will ultimately pay for increases in regulatory fees.

For all of these reasons, the Commission should continue to calculate wireless carriers' regulatory fees separately, and continue to base this calculation on a carrier's number of subscribers or licenses (as may be the case), instead of revenues. The Commission should not increase carriers' fees without any solid legal or policy reason for doing so.

C. The Record Supports a Reexamination of FTE Allocations, but Fairness and Stability Dictate a Comprehensive Review of These Allocations, and Limitations on Resulting Increases in Regulatory Fees

CCA understands the Commission's desire to utilize updated FTE data in allocating direct and indirect FTEs, but any fee increases resulting from use of updated data should be capped to limit the severity of the impact on payors. Moreover, should the Commission go further than simply using updated FTE data, and reallocate functions and activities performed by FTEs, it should review the functions and activities of all Bureaus rather than just the International Bureau.

The NPRM notes that using updated FTE data—without any changes in methodology—would impact the allocation of regulatory fees among the Bureaus.[17] Specifically, while using September 30, 2012 FTE data would keep Wireless Telecommunication Bureau percentages the

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16 GAO Report at 13.

17 NPRM ¶ 9.

same at 17.4 percent, it would increase Media Bureau fee percentages from 31.9 percent to 32.9 percent, reduce the percentage of Wireline Competition Bureau fee allocations from 44.0 percent to 27.7 percent, and increase the percentage of fees allocated to payors in the International Bureau from 6.7 percent to 22.0 percent.[18]

The FTE data the Commission uses to allocate direct and indirect FTEs should be updated to reflect the current efforts undertaken by each of the Bureaus and other offices. Several commenters encouraged the Commission to perform this update in response to the last NPRM, [19] and CCA agrees. But CCA also agrees with the Commission's proposal to limit any ultimate rate increases resulting from utilization of updated data for Fiscal Year 2013.[20] And, however, should the Commission go further and change its methodology for allocations of the workloads of the Bureaus,[21] it should look beyond merely the work of the International Bureau. As an example, in light of the upcoming incentive auction of 600 MHz spectrum, the Commission should consider whether FTEs attributable to the Auctions and Spectrum Access Division of the Wireless Telecommunications Bureau should be shared with the Media Bureau.

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18 *Procedures for Assessment and Collection of Regulatory Fees*, Notice of Proposed Rulemaking, 27 FCC Rcd 8458, 8467 ¶ 25 (2012).

19 Comments of AT&T, Inc., MD Docket No. 12-201, et al. at 3-4 (filed Sept. 17, 2012); Comments of Verizon and Verizon Wireless, MD Docket No. 12-201, et al. at 5 (filed Sept. 17, 2012); Reply Comments of CTIA – The Wireless Association, MD Docket No. 12-201, et al. at 3 (filed Oct. 23, 2012).

20 NPRM ¶ 30.

21 *Id*. at ¶¶ 15-29.

D. The Record Flatly Rejects the Commission's Continued Persistence to Assess Fees for Broadband Services

Once again, the Commission seeks comment on whether it has legal authority to include broadband as a fee category, and, if so, how such additional fees should be assessed.[22] CCA joins the chorus of commenters who previously rejected this proposal, and urge the Commission to forego creation of a broadband regulatory fee category at the present time.

The Commission's authority under the Communications Act to regulate broadband, both in the case of the Commission's open-access rules and its universal service reforms (including support mechanisms for broadband deployment) are currently pending appellate review.[23] Though neither of those cases will likely render dispositive rulings on the issue of the Commission's authority to assess fees for provision of broadband services, the appellate courts' opinions will undoubtedly inform the Commission's decision-making. The Commission should therefore forego a decision on whether to create a broadband fee category until at least such a time as final, non-appealable decisions have been rendered in those cases.

More specifically, in the context of this proceeding Verizon previously characterized a broadband fee category as "unnecessary" and argued that it would "add needless complexity to the process."[24] Verizon went on to note that "because wireless providers' regulatory fees are based on the number of assigned telephone numbers, even those wireless customers with data-

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22 *Id*. at ¶ 53.

23 *Verizon v. Fed. Commc'ns Comm'n*, No. 11-1355 (D.C. Cir. filed Jan. 20, 2011); *In re Fed. Commc'ns Comm'n, Connect America Fund (In re FCC 11-161),* Consolidation Order (JPML Dec. 14, 2011) (transferring all pending challenges to the Commission's *USF/ICC Transformation Order* to the United States Circuit Court of Appeals for the Tenth Circuit).

24 Comments of Verizon and Verizon Wireless, MD Docket No. 12-201, et al. at 5 (filed Sept. 17, 2012).

only plans . . . are already captured by the fee calculations today."[25] Clearwire agreed, arguing that assessing regulatory fees on broadband service "would be unfair, harmful, duplicative and unauthorized."[26] Finally, including broadband as a fee category could also have an adverse impact on broadband adoption (and, in turn, deployment), which is a key priority of the Commission.

CCA encourages the Commission to reject calls to create a fee category based on the provisioning of broadband services. Nothing has changed since the last comment cycle which would warrant further consideration of assessing regulatory fees based on this service at this time. On the contrary, the Commission's judgment on the matter may be significantly affected following resolution of appeals pending before the D.C. Circuit and Tenth Circuit Courts of Appeals.

CONCLUSION

CCA urges the Commission to refrain from combining wireless and wireline services into a single regulatory fee. The Commission treats the two services differently in several key respects, and punishing the wireless industry and its customers for increased adoption of wireless services doesn't make sense from a policy perspective. Additionally, the Commission's legal authority to assess regulatory fees for broadband services has come into question by multiple commenters on multiple occasions, and therefore the Commission should walk back from this proposal. Finally, any increases in regulatory fees resulting from use of updated FTE data should be capped in order to avoid shock to any particular industry segment, and if the

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25 *Id.*

26 Reply Comments of Clearwire Corp., MD Docket No. 12-201, et al. at 2 (filed Oct. 22, 2012).

Commission revises its methodology for allocating FTEs further it should do so in the context of a broader review of the various Bureaus' activities.

Respectfully submitted,

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